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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,315	07/28/2003	Rany Polany	POLANY.1CP1C1	6574
20995	7590	04/26/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				PIHULIC, DANIEL T
ART UNIT		PAPER NUMBER		
		3662		

DATE MAILED: 04/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/629,315	POLANY ET AL.	
	Examiner	Art Unit	
	Daniel Pihulic	3662	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-16 is/are rejected.
- 7) Claim(s) 17-20 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 July 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The disclosure is objected to because of the following informalities:

The term "plexiglass" appears to be Misspelled. The term "PLEXIGLAS" would appear to be more appropriate. Appropriate correction is required.

2. Claim 6 is objected to because of the following informalities:

Claim 6 recites the limitation "said audio device" in line 1. There is insufficient antecedent basis for this limitation in the claim.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application

filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 12-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Puthuff et al. (US6681022). The Puthuff et al. reference discloses the utilization of a waterproof (see column 6, lines 47-58 audio headset (**10**) comprising at least one speaker (**24**) within a waterproof enclosure (**12**), the enclosure mounted on an ear clip (**14**), the ear clip configured to removably attach to an ear of a user as recited in claim 12.

With regards to claim 13, the enclosure comprises an audio-permeable and water-resistant membranes (**42, 42a & 44**).

With regard to claim 14 the ear clip carries a communication link (**18**).

With regards to claim 15 the ear clip (**14**) attaches to a soft overmolding (see column 5, lines 32-43) to the shape of the outer ear of the user.

With regards to claim 16 the enclosure (**12**) appears to be rigid.

4. Claims 1, 2 and 4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 7 of U.S. Patent No. 6396769. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims appear to include all of the elements of the aforementioned claims.

5. Claims 1-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,4, 5, 8-10,17 and 22-25 of U.S. Patent No. 6414722. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims appear to include all of the elements of the aforementioned claims.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Pihulic whose telephone number is 703-306-4168. The examiner can normally be reached on Monday through Thursday from 7 a.m. to 5 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Tarcza, can be reached on 703-306-4171.

The fax phone numbers for the organization where this application or proceeding is assigned are:

703-872-9306 for official responses, and

703-746-3847 for unofficial communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


Daniel Pihulic
Primary Examiner
Art Unit 3662